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10/577,371	04/28/2006	Yasushi Hatano	HEI-015	9831
32628	7590	06/22/2010	EXAMINER	
KANESAKA BERNER AND PARTNERS LLP			AUGHENBAUGH, WALTER	
1700 DIAGONAL RD				
SUITE 310			ART UNIT	PAPER NUMBER
ALEXANDRIA, VA 22314-2848			1782	
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			06/22/2010	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/577,371	HATANO ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	WALTER B. AUGHENBAUGH	1782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 16 March 2010.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1 and 3-30 is/are pending in the application.

4a) Of the above claim(s) 17-30 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1 and 3-16 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>3/16/10</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input type="checkbox"/> Other: _____ .

## **DETAILED ACTION**

### ***Acknowledgement of Applicant's Amendments***

1. The amendments made in claims 1, 2, 5, 7-12 and 15 in the Amendment filed March 16, 2010 have been received and considered by Examiner.

### ***WITHDRAWN REJECTIONS***

2. The 35 U.S.C. 112, second paragraph, rejection of claims 1, 3, 5, 8 and 11 has been withdrawn due to Applicant's amendments in claims 1, 5, 8 and 11 (and cancellation of claim 3) in the Amendment filed March 16, 2010. In regard to the rejection of claim 8, Examiner notes that Applicant stated on page 10 of the Amdt. that the "project toward the interior of the container" recitation is "generic to both of the possibilities mentioned at the top of page 3 [of the Office Action in the 112 rejection of claim 8]".
3. The 35 U.S.C. 102 rejection of claims 8, 10 and 11 as being unpatentable over Fritz et al. (USPN 5,607,709) has been withdrawn due to Applicant's amendments in claim 8 in the Amendment filed March 16, 2010.
4. The 35 U.S.C. 103 rejection of claims 1-7, 9 and 12-16 as being unpatentable over Fritz et al. (USPN 5,607,709) has been withdrawn due to Applicant's amendments in claims 1 and 8 (and cancellation of claim 3) in the Amendment filed March 16, 2010.

### ***NEW REJECTIONS***

#### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 10, 15 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 10, Applicant's deletion of "is formed" (line 6) in the Amendment filed March 16, 2010 renders the claim indefinite because it cannot be ascertained what Applicant intends to recite. It is unclear if the resin lump is being recited as a part of something, including whether or not the resin lump is required as a component of the claimed container. There appears to be at least one missing word (there is no recitation that anything [for example, the container or the cover member] comprises, includes, etc. the resin lump). The language regarding the lump appears to be directed to the method of bonding a cover member to the container base. Is the lump a part of the cover member (which is not a required component of the container; see language of claim 8). Clarification and/or correction is required.

In regard to claim 15, it is unclear whether or not Applicant intends to require the cover member as a component of the claimed invention. Claim 1 does not require the cover member as an actual component of the container (see claim 1). Applicant deleted "opening rim part is heat sealed with the", which would have required the cover member. Claim 15 recites characteristics of the sealant layer of the cover member, but the claim language of claims 1 and 15 does not require that the container includes a cover member, so it is unclear if the cover member that is described in claim 15 is actually a required component of the container. Clarification and/or correction is required.

Claim 16 is rejected because it is dependent on claim 15.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1 and 5-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Kinigakis et al. (USPN 5,039,001).

In regard to independent claim 1, Kinigakis et al. teaches a polyester container that corresponds to the claimed container (see, for example, col. 4, line 66-col. 5, line 18 and Fig. 2 and 3). The horizontal portion of inner layer 120 corresponds to the claimed projecting portion that at least a portion of which comprises an amorphous portion or a lowly crystallized portion (it is aligned in a direction that projects toward an interior (and exterior) of the container) (Fig. 2 and 3). The horizontal portion of outer layer 220 corresponds to the claimed “opening rim part” (Fig. 2 and 3). The outer layer 220 corresponds to the claimed crystallized portion. Since a cover can be sealed to the base of the container Kinigakis et al., the heat sealing structure of Kinigakis et al. is adapted to form a hermetic seal between the container base and a cover that is sealed to the base. Note that the claim language does not recite that the claimed “polyester container” comprises a cover.

In regard to independent claim 8, Kinigakis et al. teaches a polyester container that corresponds to the claimed container (see, for example, col. 4, line 66-col. 5, line 18 and Fig. 2 and 3). The horizontal portion of inner layer 120 corresponds to the claimed projecting portion

and the claimed heat sealing resin piece (it is aligned in a direction that projects toward an interior (and exterior) of the container) (Fig. 2 and 3) (claim 8 recites that the projecting portion comprises the heat sealing resin piece [lines 3-4]). The horizontal portion of outer layer 220 corresponds to the claimed “opening rim part” (Fig. 2 and 3). The horizontal portion of inner layer 120 (the claimed projecting portion and the claimed heat sealing resin piece) protrudes toward an interior of the container because it is horizontal, and is therefore aligned in a direction that protrudes toward an interior (and exterior) of the container (Fig. 1-3). The horizontal portion of inner layer 120 (the claimed projecting portion and the claimed heat sealing resin piece) is positioned to be substantially appressed against the upper surface of the opening rim part (outer layer 220) by a cover member having a sealant layer on an inner face thereof (Fig. 2 and 3). The horizontal portion of inner layer 120 (the claimed projecting portion and the claimed heat sealing resin piece) is adapted to melt and deform during heat sealing and bonding of the resin piece to the sealant layer of the cover member (see, for example, col. 4, line 66-col. 5, line 18 and Fig. 2 and 3). Note that the claim language does not recite that the claimed “polyester container” comprises the claimed “cover member” that comprises a sealant layer.

In regard to claim 5, the projecting portion is disposed at “an outer peripheral side of the upper surface of the opening rim part”. See discussion in regard to claim 1 and for example, col. 4, line 66-col. 5, line 18 and Fig. 2 and 3.

In regard to claim 6, the base of the container is “cup-like” (Fig. 2), and at least the trunk portion of the container is crystallized because outer layer 220 is crystallized, and inner layer 220 may be lowly crystallized (col. 4, line 66-col. 5, line 18). The structure implied by

“orientationally or thermally crystallized” is met by the teaching of Kinigakis et al. that the outer layer 220 is crystallized, and that inner layer 220 may be lowly crystallized (col. 4, line 66-col. 5, line 18).

In regard to claim 7, the opening rim part (horizontal portion of outer layer 220) has a flange part (horizontal portion of outer layer 220), and the projecting portion (horizontal portion of inner layer 120) is disposed on an upper surface of the flange part.

In regard to claim 9, Kinigakis et al. teaches the polyester container as discussed above in regard to claim 1. The horizontal portion of inner layer 120 corresponds to the claimed projecting portion and the claimed heat sealing resin piece (it is aligned in a direction that projects toward an interior (and exterior) of the container) (Fig. 2 and 3) (claim 9 recites that the projecting portion comprises the heat sealing resin piece [lines 3-4]). The horizontal portion of outer layer 220 corresponds to the claimed “opening rim part” (Fig. 2 and 3). The horizontal portion of inner layer 120 (the claimed projecting portion and the claimed heat sealing resin piece) protrudes toward the interior of the container because it is horizontal, and is therefore aligned in a direction that protrudes toward an interior (and exterior) of the container (Fig. 1-3). The horizontal portion of inner layer 120 (the claimed projecting portion and the claimed heat sealing resin piece) is in a state where the resin piece is positioned to be substantially appressed against the upper surface of the opening rim part (outer layer 220) by a cover member having a sealant layer on an inner surface thereof (Fig. 2 and 3). The horizontal portion of inner layer 120 (the claimed projecting portion and the claimed heat sealing resin piece) is adapted to melt and deform during heat sealing and bonding of the resin piece to the sealant layer of the cover member (see, for example, col. 4, line 66-col. 5, line 18 and Fig. 2 and 3). Note that the claim language does not recite that

the claimed “polyester container” comprises the claimed “cover member” that comprises a sealant layer.

In regard to claim 10, the structure that appears to be recited in claim 10 is taught by Kinigakis et al. (col. 4, line 66-col. 5, line 18 and Fig. 2 and 3). Note that the claim language of neither claim 8 nor claim 10 recites that the claimed “polyester container” comprises the claimed “cover member” that comprises a sealant layer. The recitation “a resin lump... to the container” is a method limitation that has been given little patentable weight since the method of forming the article is not germane to the issue of patentability of the article itself. This recitation does not appear to require any structural limitation of the final product.

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claims 2, 4 and 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kinigakis et al. (USPN 5,039,001).

In regard to claim 2, Kinigakis et al. teaches the polyester container as discussed above in regard to claim 1. Kinigakis et al. teaches that the crystallinity of the inner layer 120 is less than 10% (col. 5, lines 8-12).

While Kinigakis et al. teaches that the crystallinity of the outer layer 220 is greater than 10%, and typically from 12% to 25%, Kinigakis et al. does not specifically teach a minimum crystallinity of 20% for the opening rim part (outer layer 220).

However, since Kinigakis et al. teach that the crystallinity should be high to provide barrier properties and the desired dimensional stability (col. 5, lines 2-18 and 47-57), it would have been obvious to one of ordinary skill in the art at the time the invention was made to have formed the outer layer 220 such that the crystallinity is toward the higher part of the “typical” 12% to 25% range (such as greater than 20%), or greater than 25% in order to achieve the desired barrier properties and dimensional stability depending upon the particular desired end result, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art in the absence of unexpected results. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). MPEP 2144.05 II.B.

In regard to claim 4, Kinigakis et al. teaches the polyester container as discussed above in regard to claim 1.

While Kinigakis et al. teaches that the thickness of the projecting portion (inner layer 120) may be varied such that it constitutes 20 to 40% of the thickness of the stock material from

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which the container is formed (col. 5, lines 19-32), Kinigakis et al. does not specifically teach the thickness of the inner layer 120 in its final form.

However, since Kinigakis et al. teach that the thickness of the projecting portion (inner layer 120) may be varied such that it constitutes 20 to 40% of the thickness of the stock material from which the container is formed (col. 5, lines 19-29), and that the particular thickness depends on the specific product application, the intended final size of the container, and the extent to which the stock is stretched (col. 5, lines 29-32), it would have been obvious to one of ordinary skill in the art at the time the invention was made to have varied the thickness of the inner layer 120 depending upon factors such as the intended food to be stored, the amount of the food to be stored and the intended final size of the container depending upon the particular desired end result, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art in the absence of unexpected results. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). MPEP 2144.05 II.B.

In regard to claim 11, Kinigakis et al. teaches the polyester container as discussed above in regard to claim 8.

While Kinigakis et al. teach that the peel strength of the seal between the cover and the container is such that the peel strength enables relative ease in removal under the conditions of use (col. 6, lines 32-41), Kinigakis et al. does not specifically teach a heat sealing strength range in the claimed units.

However, since Kinigakis et al. teach that the peel strength of the seal between the cover and the container is such that the peel strength enables relative ease in removal under the conditions of use (col. 6, lines 32-41), and since the strength may be from 3 to 10 pound per inch

at 21C (col. 6, lines 40-41), and therefore may be varied, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have formed the seal such that the heat sealing strength is within the claimed range (which is recited as “enabl[ing] easy opening”) in order to achieve the desired seal strength depending upon the particular desired end result, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art in the absence of unexpected results. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). MPEP 2144.05 II.B.

In regard to claim 12, while Kinigakis et al. does not specifically teach that the resin piece has a tapered shape, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have varied the shape of the resin piece in order to achieve the desired aesthetic effect. MPEP 2144.04 I.

In regard to claim 13, while Kinigakis et al. does not specifically teach that “the upper surface of the opening rim part has a tapered face...” as claimed, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have varied the shape of the opening rim part in order to achieve the desired aesthetic effect. MPEP 2144.04 I.

In regard to claim 14, the structure that appears to be recited in claim 14 (other than the claimed shape which is addressed above in regard to claim 13) is taught by Kinigakis et al. (Fig. 2 and 3).

In regard to claims 15 and 16, while Kinigakis et al. does not specifically teach that the sealant layer of the cover member is made of polybutylene-terephthalate-based resin, or another polyester resin having a melting point between 110 and 225°C, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have selected a material

such as polybutylene-terephthalate-based resin that has a melting point that falls within a desired temperature range in order to achieve the desired degree of heat resistance, depending upon the particular desired end results.

***Response to Arguments***

11. All of Applicant's arguments presented in the Amendment filed March 16, 2010 are moot due to the withdrawal of all of the rejections due to Applicant's amendments in the Amendment filed March 16, 2010.

***Conclusion***

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is (571) 272-1488. The examiner can normally be reached on Monday-Thursday from 9:00am to 7:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye, can be reached on (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Walter B Aughenbaugh /

Examiner, Art Unit 1782

6/12/10

/Rena L. Dye/  
Supervisory Patent Examiner, Art Unit 1782